

(RESERVED ON 02.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the **09th** day of **MAY 2018**.

ORIGINAL APPLICATION NO. 1614 OF 2012

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Arvind Kumar Shukla, S/o Late Shri KS Shukla, R/o V & P – Lalgopal ganj, Retired Mail Man, R.M.S. Allahabad.
2. Raj Kumar Shukla, S/o Late Shri KS Shukla, R/o V & P – Lalgopal ganj, Retired Mail Man, R.M.S. Allahabad.

.....Applicants

VER S U S

1. Union of India, through Secretary Ministry of Communication Deptt of Postal, Dak Bhawan Sanshad Marg, New Delhi.
2. Senior Superintendent of RMS, A Division Allahabad.
3. Head Record Officer RMS, A Division Allahabad.

.....Respondents

Advocate for the Applicant : Shri Bhagirathi Tiwari

Advocate for the Respondents : Shri V K Pandey

O R D E R

The present Original Application (in short OA) has been filed by the late father of the applicants under Section-19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) *To issue writ of certiorari quashing the impugned order dated 31.10.2012, including 29.09.2012 and 02.11.2010 (A-1) regarding rejecting the claim for refund of Rs. 45385/- deducted as electricity bills from gratuity.*
- (ii) *To consider for issuing orders or directions, in the nature of mandamus commanding the respondents for considering to refund the deducted amount of Rs. 1 lakh including Rs. 45385/- as electricity dues from gratuity (A-1 & A-2).*

- (iii) *To consider any other relief which the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*
- (iv) *To award the cost of the application throughout."*

2. The brief facts of the case are that the applicants' father was appointed as a regular Mail Man on 14.05.1981 and he retired from service on 30.04.2010 vide order dated 08.04.2010 (Annexure No. A-3 to the OA). It is stated in the OA that the respondents vide order dated 06.09.2010 (Annexure No. A-2 to the OA) disbursed gratuity to the applicant withholding an amount of Rs. 1,00,000/- and Rs. 45,385/- towards electricity dues for period 02.06.1987 to 02.04.1997. In this connection the deceased employee furnished a representation. However, the representation was rejected by the respondents, vide order dated 31.10.2012. In this OA, the impugned orders dated 31.10.2012, 29.08.2012 and 02.11.2010 (Annexure No. A-1 to the OA) have been challenged.

3. The respondents in their counter affidavit have submitted the following:-

- (i) Late father of the applicants lived in quarter no. 8/12 RMS Rest House Colony, Noorullah Road, Allahabad from 02.06.1987 to 02.04.1997 without depositing the electricity bills. The outstanding electricity dues from that quarter was divided between other allottees according to their residing period and share of the applicant was estimated to Rs. 45,385/-.
- (ii) The allegation of recovery of Rs. 1,00,000/- is incorrect, since Rs. 1,00,000/- was paid to the applicant as provisional DCRG vide bill no. 25 dated 09.06.2010 which was adjusted against the final DCRG amount. Rs. 45,385/- was deducted towards electricity dues from the DCRG of the applicant, since for the payment of outstanding electricity dues for quarter no. 8/12 in Rest House, RMS Colony occupied by the applicant from 02.06.1987 to 02.04.1997, he was reminded from time to time to clear the electricity dues,

however, the applicant did not bother to clear his share of electricity dues. As per the letter received from electricity board, the amount had to be recovered from DCRG of the applicant. Since the bill was cleared by the respondents vide sanction order dated 02.11.2010 (Annexure A-1). Hence, there is no valid ground in this OA.

4. During the pendency of the OA, Shri Kripa Shanker Shukla, the applicant expired on 22.10.2013, therefore his name was substituted by his two legal heirs in the OA.

5. Heard the learned counsel for the applicants. He reiterated the points in the OA that the electricity dues as well as Rs. 1,00,000/- deducted from the DCRG are payable to the applicant as the electricity dues cannot be recovered from gratuity as per Rule-73 of CCS (Pension) Rules, 1972 (Annexure No. A-4). Learned counsel for the respondents, on the other hand, submitted that electricity dues are payable by the applicant and it was rightly recovered from the DCRG of the deceased employee.

6. I have considered the submissions as well as materials available on record. The Rule 72 (1) (2) of CCS (Pension) Rules, 1972 pertains to adjustment of dues pertaining to Government accommodation. The aforesaid rule is quoted below:-

"72. Adjustment and recovery of dues pertaining to Government accommodation:-

(1) The Directorate of Estates on receipt of intimation from the Head of Office under sub-rule (1) of Rule 57 regarding the issue of No Demand Certificate shall scrutinize its records and inform the Head of Office [within two months], if any licence fee was recoverable from him in respect of the period prior to right months of his retirement. If no intimation in regard to recovery of outstanding licence fee is received by the Head of Office by the stipulated

date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement.

(2) The Head of Office shall ensure that licence fee for the next eight months, that is upto the date of retirement of the allottee, is recovered every month from the pay and allowances of the allottee."

From the above rule, it is clear that in respect of the dues pertaining to the licence fee for the Government accommodation, steps have to be taken by the Department before the retirement of the concerned employee. In this case the late father of the applicants retired on 30.04.2010, whereas the electricity dues pertaining to the period 02.06.1987 to 02.04.1997 was cleared by the respondents vide order dated 02.11.2010 i.e., after seven months of retirement. Further, withholding of gratuity to recover outstanding electricity dues is not permissible either under Rule 72 or Rule 73 of the CCS (Pension) Rules, 1972. Therefore, the recovery of Rs. 45,385/- from the DCRG of the applicants' father is not permissible under the Rules. Moreover, there is no evidence that has been furnished by the respondents to show that the deceased employee had been notified about these dues prior to effecting recovery from the DCRG. Hence, there is also violation of the principles of natural justice in this case.

7. Generally, the electricity dues are payable to the concerned electricity department/State Electricity Board from time to time. In case, the electricity bill is not paid by the allottee/occupant, the electricity board takes coercive action like writing to the concerned Head of Office for recovery and/or disconnection of electricity to ensure recovery of the dues. It is not explained in the pleadings of the respondents as to why

the State Electricity Board did not take any measures for recovery of the electricity dues, which related to the period 02.06.1987 to 02.04.1997 till the date of retirement of the deceased employee on 30.04.2010. Hence, I am of the view that the recovery of Rs. 45,385/- has been effected from DCRG of the applicant without any justification and it is against the provisions of CCS (Pension) Rules, 1972.

8. Regarding, the release of Rs. 1,00,000/- as provisional DCRG to the deceased employee, as contended in the para-8 of the counter, the rejoinder filed by the applicants simply denied the contention of the para-8 instead of giving any satisfactory reply as to whether the payment of Rs. 1,00,000/- made through Bill No. 25 dated 09.06.2010 is admitted or not admitted. Hence, in absence of any satisfactory or specific denial on that point in the pleadings it is presumed that Rs. 1,00,000/- was paid to the deceased employee as provisional DCRG prior to payment of full amount and the contention of the respondents in this regard is acceptable.

9. In these circumstances, the OA is allowed and the orders dated 30.10.2012, 29.08.2012 and 02.11.2010 are set aside and quashed and the respondents are directed to refund the amount of Rs. 45,385/- which was recovered from DCRG of the deceased employee within two months from the date of receipt of certified copy of this order. No order as to costs.

**(GOKUL CHANDRA PATI)
MEMBER-A**

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